

Board Administration and Regulatory Coordination Unit

Division 3. Air Resources Board

Chapter 1. Air Resources Board

Subchapter 1.25. Administrative Procedures–Hearings

Article 4. Administrative Hearing Procedures for Review of Citations

Subarticle 9. Hearings

§ 60075.34. Evidence.

(a) Testimony shall be taken only on oath or affirmation.

(b) The hearing need not be conducted according to technical rules relating to evidence and witnesses. The hearing officer shall admit evidence which is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions, and which is not irrelevant, immaterial, unduly repetitious, or otherwise unreliable or of little probative value. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The application of these rules shall not affect the substantial rights of the parties as provided in the Evidence Code.

(c) The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing.

(d) Consistent with the provisions of section 60075.26(e), trade secret and other confidential information may be introduced into evidence. The hearing officer shall take all precautions to preserve the confidentiality of such information, and may make such orders as may be necessary to consider such evidence in a closed meeting, including the use of a supplemental decision or order to address matters which arise out of that portion of the evidence which is confidential.

(e) The hearing officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time or unduly prejudices the other party.

(f) In reaching a decision, official notice may be taken, either before or after submission of the proceeding for decision, of any generally accepted technical or scientific matter within the state board's area of expertise, and determinations, rulings, orders, findings and decisions, required by law to be made by the state board or the hearing officer.

(1) The hearing officer shall take official notice of those matters set forth in section 451 of the Evidence Code.

(2) The hearing officer may take official notice of those matters set forth in section 452 of the Evidence Code.

(3) Each party shall give notice of a request to take official notice and be given reasonable opportunity on request to present information relevant to:

(A) The propriety of taking official notice, and

(B) The effect of the matter to be noticed.

NOTE: Authority cited: Sections 39600, 39601, 43028, 43031(a) and 44011.6(m), Health and Safety Code. Reference: *Mathews v. Eldridge*, 424 U.S. 319 (1976); Sections 43028, 43031(a) and 44011.6, Health and Safety Code; and Sections 451 and 452, Evidence Code.

REFERENCE